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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 AIRLINES REPORTING CORPORATION,

11 Plaintiff/Judgment Creditor,

12 v.

13 COMMERCIAL TRAVEL
CORPORATION d/b/a MATLOCK
14 TRAVEL, *et al.*,

15 Defendants/Judgment Debtors.

CASE NO. 08-MC-00088

DEFENDANT MARIO RENDA'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO VACATE JUDGMENT PURSUANT TO
FEDERAL RULES OF CIVIL
PROCEDURE, RULE 60 (b)(4)

Date: July 25, 2008
Time: 10:00 a.m.
Dept.: 1, 4th Floor
Judge: Hon. Irma E. Gonzalez

Judgment entered: September 4, 2007

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I.

INTRODUCTION

Plaintiff AIRLINES REPORTING CORPORATION's ("ARC") default judgment against Defendant MARIO RENDA is void because the United States District Court for the Eastern District of Virginia lacked personal jurisdiction over Mr. RENDA. In March 2005, the Virginia District Court ruled in a related and virtually identical action between ARC and Mr. RENDA, styled *Airlines Reporting Corporation v. Uniglobe Fairway Travel, Inc.*, United States District Court, Eastern District of Virginia, Civil Action No.: 1:04cv622, that Mr. RENDA did not have the constitutionally required minimum contacts with Virginia to support personal jurisdiction. Defendant Mario Renda's Notice of Lodgment ("DNOL"), Ex. 1, p. 15, §IV. ARC's purported evidence regarding personal jurisdiction was so lacking that the Virginia District Court raised the issue of personal jurisdiction *sua sponte*, and, after a full briefing on the merits, denied ARC's unopposed motion for entry of default judgment.¹ See, *id.* at Ex. 1, pp. 2-3, 7 & 15; Ex. 2, p. 16. On March 21, 2005, the Virginia District Court, per the Honorable T.S. Ellis, III, dismissed the *Uniglobe* case without prejudice as to Mr. RENDA based on a lack of personal jurisdiction. *Id.* at Ex. 2, p. 16.

ARC filed the *Uniglobe* case and the case at bar within two days of each other.² The cases involve identical causes of action and virtually identical factual allegations, but they were never consolidated. As a result, different judges and magistrates presided over the two matters. See, *id.*, at Ex. 1, p. 15, Ex. 2, p. 16; Ex. 6, p. 168; Ex. 7, p. 169. As discussed in more detail below, this circumstance, the passage of approximately two and a half years between the entry of the *Uniglobe* judgment and the default judgment here, and ARC's

¹ Mr. RENDA did not make a special appearance in either *Uniglobe* or the case at bar because of the extreme burden it would pose, and because he considered the claims against him to be frivolous. 6/30/08 Declaration of Mario Renda ("M.Renda Decl."), p. 3, ¶12, ll. 14-17.

² ARC filed the case at bar on May 26, 2004, and *Uniglobe* on May 28, 2004. DNOL, Ex. 9, p. 171, #1 & Ex. 10, p. 186, #1. ARC added Mr. RENDA as a defendant in both actions by filing first amended complaints on July 4, 2004. *Id.* at Ex. 3, p. 17 & p. 19, ¶9; Ex. 4, p. 83 & p. 85, ¶12.

1 wrongful failure to disclose the *Uniglobe* judgment to the district judge who presided over this
 2 action, resulted in the Virginia District Court entering a void default judgment against
 3 Mr. RENDA.³

4 When a court lacks personal jurisdiction, a default judgment against the defendant is
 5 void and may be set aside and vacated. *See, Veeck v. Commodity Enter., Inc.*, 487 F.2d 423
 6 (9th Cir. 1973); *Swaim v. Moltan Co.*, 73 F.3d 711, 716, *cert. den.*, 517 U.S. 1244 (1996);
 7 *Covington Indus., Inc., v. Resinte, A.G.*, 629 F.2d 730, 732 (2d Cir. 1980). A void judgment
 8 may be directly or collaterally attacked at any time in a motion under Federal Rules of Civil
 9 Procedure, Rule 60(b). *Swaim, supra*, 73 F.3d at 719; Fed. R.Civ. P. 60(b)(4) & (c)(1). A
 10 court of registration has jurisdiction to entertain a motion challenging the underlying judgment
 11 under Rule 60(b). *FDIC v. Aaronian*, 93 F.3d 636, 639 (9th Cir. 1996); *Covington Indus.,*
 12 *Inc., supra*, 629 F.2d at 732. “[Where] the underlying judgment is void, it is a *per se* abuse of
 13 discretion for a district court to deny a movant’s motion to vacate the judgment under Rule
 14 60(b)(4).” *Burda Media Inc., v. Viertel*, 417 F.3d 292, 298 (2d Cir. 2005); *see also, Blaney*
 15 *v. West*, 209 F.3d 1027, 1031 (7th Cir. 2000)(“Once a district court decides that the underlying
 16 judgment is void, the trial judge has no discretion and must grant the appropriate 60(b) relief.

17 / / /

19 ³ ARC has made a practice of ignoring the *Uniglobe* judgment. On, June 13, 2005, a
 20 mere three months after the Virginia District Court ruled that there was no personal jurisdiction
 21 over Mr. RENDA in Virginia, ARC filed a state action against Mr. RENDA in the Circuit
 22 Court for Arlington County, Virginia, styled *Airlines Reporting Corporation v. McCord*
 23 *Consumer Direct, Inc.*, d/b/a A Better Airfare, et al, At Law No.:05-367. 6/30/08 Declaration
 24 of John J. Freni (“Freni Decl.”), p. 1, ¶ 2, l. 25 - p. 2, ¶ 2, l. 2. ARC’s allegations in *McCord*
 25 were virtually identical to its allegations in *Uniglobe* and the case at bar. *Id.* at p. 2, ¶ 2, ll. 2-
 26 4. On September 20, 2005, ARC obtained a default judgment against Mr. RENDA in *McCord*,
 27 and in the process did not disclose the *Uniglobe* judgment to the Virginia State Court, which did
 28 not question jurisdiction. *Id.* at p. 2, ¶ 3, ll. 5-7. ARC domesticated its default judgment in the
 San Diego County Superior Court on May 25, 2006. *Id.* at p. 2, ¶ 4, ll. 8-9. On May 2, 2008,
 Mr. RENDA brought a motion to vacate the default judgment as void on the grounds that the
 Virginia State Court lacked personal jurisdiction, as established in *Uniglobe*. *Id.* at p. 2, ¶ 4,
 ll. 9-12. On June 26, 2008, the Superior Court granted Mr. RENDA’s motion to vacate. *Id.* at
 p. 2, ¶ 4, ll. 10-14.

1 It is a per se abuse of discretion to deny a Rule 60(b)(4) motion when the trial court has no
2 jurisdiction over the action.”).

3 Accordingly, Mr. RENDA moves this Court pursuant to Federal Rules of Civil
4 Procedure, Rule 60 (b)(4), and pursuant to the Court’s inherent power, to vacate ARC’s void
5 judgment against him.

6 II.

7 STATEMENT OF FACTS

8 A. The Uniglobe Case

9 On July 30, 2004, ARC filed a first amended complaint in *Uniglobe* to name
10 Mr. RENDA as a defendant. DNOL, Ex. 1, p. 1; Ex. 7. ARC alleged that the action was
11 based on diversity jurisdiction under 28 U.S.C. section 1332 and that the District Court had
12 personal jurisdiction over the defendants under Virginia’s long-arm statute, Va, Code section
13 8101-328.1, on the basis of the defendants’ contacts with Virginia. *Id.* at Ex. 1, p. 4.

14 ARC alleged that Uniglobe was a wholly owned subsidiary of Aloha Continental Tours
15 & Travel, a California corporation that operated out of Santa Ana, California. *Id.* at Ex. 1,
16 p. 5, fn 1. ARC serves as a national clearinghouse for issuing documents and other forms to
17 travel agents to be used as air passenger tickets by the travel agent’s customers. *Id.* at Ex. 3,
18 p. 21, ¶ 29. ARC had an Agent Reporting Agreement (ARA) with Uniglobe. *Id.* at Ex. 1,
19 p. 5.

20 ARC alleged that Mr. RENDA and other defendants, through their operation of Aloha
21 in California, operated Uniglobe as an unapproved travel agency, and failed to submit accurate
22 weekly sales reports or forward ARC’s share of the proceeds from Uniglobe’s sale of airline
23 tickets. *Id.* at Ex. 1, pp. 5-6. ARC contended that personal jurisdiction was appropriate under
24 Virginia’s long-arm statute because the defendants, through their operation of Aloha in
25 California, directed activities into Virginia through Uniglobe by ordering ticket stock from
26 ARC’s headquarters in Arlington Virginia, submitting false sales reports to ARC in Virginia
27 and communicating with persons at ARC’s Arlington Virginia location. *Id.* at Ex. 1, p. 7.
28 ARC also contended that Mr. RENDA directed activities into Virginia because Aloha allegedly

1 owned a travel agency called A Better Airfare, which had some operations in Virginia. *Id.*
 2 Finally, ARC contended that Mr. RENDA “necessarily acceded” to the ARA even though he
 3 had not signed the ARA. *Id.* at Ex. 1, p. 6.

4 ARC brought causes of action against Mr. RENDA for breach of fiduciary duty,
 5 conversion, fraud, statutory conspiracy, common law conspiracy and unjust enrichment. *Id.*
 6 at Ex. 1, p. 3.

7 On September 2, 2004, ARC brought a motion for entry of default judgment against
 8 Mr. RENDA. *Id.* at Ex. 3. The District Court, on its own motion, referred the matter to
 9 Magistrate Judge Barry R. Poretz to evaluate whether the court had personal jurisdiction over
 10 Mr. RENDA. *Id.* at Ex. 1, p 2.

11 The Court allowed ARC to submit two supplemental memoranda in support of its
 12 motion for default judgment with supplemental supporting declarations and evidence, in order
 13 to fully brief the personal jurisdiction issue. *Id.* at Ex. 1, p 2.

14 On March 2, 2005, Magistrate Poretz issued a Supplemental Report and
 15 Recommendation in which he found that the Court lacked personal jurisdiction over
 16 Mr. RENDA because Mr. RENDA had insufficient contacts with Virginia, and recommended
 17 that the Court dismiss ARC’s action against Mr. RENDA without prejudice. *Id.* at Ex. 1,
 18 pp. 1, 7, 12 & 15.

19 Magistrate Poretz based his conclusions on a detailed analysis of the personal
 20 jurisdiction issue in which he considered ARC’s allegations and evidence concerning
 21 Mr. RENDA’s contacts with Virginia, Constitutional requirements and Virginia’s long-arm
 22 statute. *Id.* at Ex. 1, pp. 7-15. Magistrate Proetz found that Mr. RENDA did not have
 23 minimum contacts with Virginia:

24 [T]he Defaulting Defendants did not even sign the contract or visit the forum
 25 state in connection with the contract. Assuming that the Defaulting Defendants’
 26 did accept and ratify the ARA through their actions, their contacts with Virginia
 27 are even less than those presented in *Le Bleu*. Consequently, **it is**
 28 **presumptively unreasonable to require anyone to submit to the jurisdiction**
of a foreign court where, as here, the contracts are limited merely to
exchanging communications with an entity in the foreign state (i.e., ordering
stock, submitting reports, and contacting via telephone). **In other words,**
the Defaulting Defendants’ contacts are at most, negligible and, at best,

1 attenuated. For these reasons, it would violate due process to require
 2 Defendants Mario Renda and Robert Kremer to submit to the burden of
 3 litigating this action in Virginia.

4 *Id.* at Ex. 1, p. 14 (emphasis added).

5 On March 21, 2005, the District Court adopted Magistrate Poretz' Report and
 6 Recommendation and dismissed ARC's action against Mr. RENDA without prejudice. *Id.* at
 7 Ex. 2, p. 16.

8 **B. ARC's Allegations Against Mr. Renda in this Case are, for all Intents and**
 9 **Purposes, Identical to its Allegations in Uniglobe**

10 ARC's allegations against Mr. RENDA in this matter are virtually identical to its
 11 allegations in the *Uniglobe* case.⁴ The gravamen of ARC's allegations, all made on
 12 information and belief, is that Mr. RENDA, with other defendants, purchased MATLOCK
 13 TRAVEL and COSTA TRAVEL without approval from ARC, and after he became an officer,
 14 director or principal, he, and other defendants, intentionally failed to accurately report and pay
 15 the amounts these agencies owed to ARC.⁵ DNOL, Ex. 4, p. 86, ¶18; p. 88, ¶27; p. 89, ¶37;
 16 p. 90, ¶44 - p. 92, ¶50; p. 92, ¶57; p. 93, ¶64; p. 94, ¶68 - p. 96, ¶76. ARC alleged that the
 17 relevant time frame for the two cases was just one year apart: 2000 to October 17, 2003 in
 18 *Uniglobe*, and 1999 to October 17, 2003 in the case at bar. *Id.* at Ex. 3, p. 22, ¶34, p. 26,
 19 ¶57; Ex. 4, p. 90, ¶44, p. 95, ¶73- p. 96, ¶74.

20 As in *Uniglobe*, ARC alleged that the action was based on diversity jurisdiction under
 21 28 U.S.C. section 1332 and that the District Court had personal jurisdiction over the

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23 ⁴ Compare, *id.* at Ex. 3, p. 19, ¶9; p. 20, ¶22; p. 22, ¶34 - p. 23, ¶38; p. 24, ¶¶ 44 &
 24 49; p. 25, ¶52 - p. 26, ¶59; p. 29, ¶73; p. 30, ¶¶ 78 & 80; p. 31, ¶82 - p. 39, ¶113; p. 39,
 25 ¶115; p. 40, ¶¶ 119 & 127 and p. 25, Wherefore clause, with Ex. 4, p. 85, ¶12; p. 86, ¶18; p.
 26 88, ¶27; p. 89, ¶37; p. 90, ¶44; p. 90, ¶46 - p. 92, ¶50; p. 92, ¶57; p. 93, ¶64; p. 94, ¶68 - p.
 96, ¶76; p. 101, ¶100; p. 102, ¶¶ 104 & 106; p. 103, ¶107 - p. 104, ¶113; p. 105, ¶116 - p.
 112, ¶141; p. 113, ¶146; p. 114, ¶156 & Wherefore clause.

27 ⁵ In *Uniglobe*, ARC alleged on information and belief that Mr. RENDA was an officer,
 28 principal and owner of Uniglobe. DNOL, Ex. 3. ARC apparently later conceded that
 Uniglobe was owned by Aloha. *Id.* at Ex. 1, p. 5.

1 defendants under Virginia's long-arm statute, Va, Code section 8101-328.1, on the basis of the
2 defendants' contacts with Virginia. *Id.* at Ex. 4, p. 89, ¶¶ 33 & 35.

3 Initially, the case at bar was on a parallel track with *Uniglobe*. ARC filed this case on
4 March 26, 2004, two days before it filed *Uniglobe*, it filed its amended complaint to add
5 Mr. RENDA as a defendant on July 30, 2004, the same day it filed its amended complaint in
6 *Uniglobe*, and it filed its motion for entry of default judgment on September 2, 2004, the same
7 day it moved for entry of default judgment in *Uniglobe*. *Id.* at Ex. 9, p. 171, #1 & 6, p. 172,
8 #16; Ex. 10, p. 186, #1, p. 187, #5, p. 188, #15. After September 2, 2004, however, the
9 cases diverged because of the different approaches taken by the different judges and
10 magistrates handling the matters, and because ARC did not disclose the *Uniglobe* judgment to
11 Judge James C. Cacheris, who ultimately entered the default judgment.

12 On October 22, 2004, Magistrate Liam O'Grady issued a Report and Recommendation
13 concerning ARC's motion for entry of default judgment. *Id.* at Ex. 6, pp. 159-168. Unlike in
14 *Uniglobe*, where Judge Ellis directed Magistrate Poretz to enter findings and recommendations
15 concerning *in personam* jurisdiction based on substantive briefing (*id.* at Ex. 1, p. 2),
16 Magistrate O'Grady accepted ARC's allegations as a basis for personal jurisdiction. *Id.* at Ex.
17 6, p. 160-161. Magistrate O'Grady recommended that the District Court issue an interlocutory
18 default judgment against Mr. RENDA that would be subject to revision at any time before the
19 entry of judgment adjudicating all the claims, rights and liabilities of all the parties named in
20 the action, to insure against inconsistent judgments on ARC's claims, which were all joint and
21 several, because other defendants still had the opportunity to actively defend the case. *Id.* at
22 Ex. 6, pp. 9-10.

23 The District Court, per the Honorable James C. Cacheris, did not issue an interlocutory
24 default judgment. *See, id.* at Ex. 10, p. 189, #25 - p. 191, #49. Instead, Judge Cacheris
25 waited until September 4, 2007, to take action on Magistrate O'Grady's Report and
26 Recommendation. *Id.* at Ex. 7, p. 169. Although the same counsel represented ARC in both
27 actions, it is apparent from the Court's Order and docket that the default judgment was issued
28 without a hearing, (see, *id.* at Ex. 7, p. 169; Ex. 10, p. 191, ## 47-49) and that the Court was

1 never informed that over two years earlier Judge Ellis dismissed Mr. RENDA from the
 2 *Uniglobe* case without prejudice because of a lack of personal jurisdiction. *See, id* at Ex. 10,
 3 p. 189, #25 - p. 191, #49.

4 III.

5 THIS COURT, AS THE REGISTERING COURT, 6 HAS JURISDICTION TO HEAR MOTIONS CHALLENGING ARC'S DEFAULT JUDGMENT

7 A. It is Well-Established that a Registering Court Has Jurisdiction to Hear Rule 60(b) 8 Motions.

9 A majority of the Circuits, including the Ninth Circuit, hold that registering courts may
 10 rely on Federal Rules of Civil Procedure, Rule 60(b)(4)⁶ to void a default judgment if the
 11 rendering court was without jurisdiction over the defendant. *Harper Macleod Solicitors v.*
 12 *Keaty & Keaty*, 260 F.3d 389, 394-395 (5th Cir. 2001)(hereinafter, "*Harper*"); *FDIC v.*
 13 *Aaronian*, 93 F.3d 636, 639 (9th Cir. 1996)(hereinafter "*Aaronian*"). A court of registration
 14 generally has jurisdiction to hear motions challenging the underlying judgment. *Aaronian*,
 15 *supra*, at 639. "It makes no difference whether the challenge is brought via the procedure
 16 described in Rule 60, or some state law analogue to Rule 60, or under the court's inherent
 17 power to set aside a judgment in equity, a power which Rule 60 explicitly preserves." *Id.*

18 B. Where, as here, a Default Judgment is Entered Without the Benefit of Argument 19 from the Defendant, it is Appropriate for the Registering Court to Rule on a Motion 20 Under Rule 60(b)(4)

21 Although courts generally prefer litigants to bring motions for postjudgment relief in
 22 the rendering court, "such deference is less appropriate when the challenged judgment was
 23

24 ⁶ Rule 60(b)(4) provides:

25 On motion and just terms, the court may relieve a party or its legal representative
 26 from a final judgment, order, or proceeding for the following reasons.

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(4) the judgment is void;

1 issued without the benefit of argument from one party and the basis for the 60(b) challenge is
2 jurisdictional.” *Harper, supra*, at 395. As the *Harper* court explained:

3 “[A] court of registration effectively can tell a rendering court not to enforce a
4 *default judgment* when the defaulting defendant never appeared in the court of
5 rendition and had a valid jurisdictional complaint. That one district court may
6 exercise such authority over another is a necessary consequence of the
7 established rule that a defendant may challenge a rendering court’s personal
8 jurisdiction in a court in which enforcement of a default judgment is
9 attempted. Such authority also reflects the federal systems disdain for
10 default judgments.”

11 *Id.* (italics in original)(emphasis added).

12 Mr. RENDA did not appear in either *Uniglobe* or the case at bar because of the severe
13 burden it would have imposed on him, because he has no contacts with Virginia, and because
14 he believes ARC’s claims are frivolous. M.Renda Decl., p. 3, ¶12, ll. 14-17. Instead,
15 Mr. RENDA is exercising his right to challenge ARC’s default judgment here in California,
16 his state of residence.

17 **C. It is a *Per Se* Abuse of Discretion to Deny a Rule 60(b)(4) Motion When There was**
18 **a Lack of Personal Jurisdiction.**

19 Rule 60(b) is remedial in nature and must be liberally applied. *Meadows v. Dominican*
20 *Republic*, 817 F.2d 517, 521 (9th Cir. 1987). A district court’s decision whether to vacate a
21 judgment for a lack of personal jurisdiction under Rule 60(b)(4) is reviewed *de novo* because it
22 is purely a question of law. *Aaronian, supra*, at 639. “‘Under Rule 60(b)(4) a deferential
23 standard of review is not appropriate because if the underlying judgment is void, it is a *per se*
24 abuse of discretion for a district court to deny a movant’s motion to vacate the judgment under
25 Rule 60(b)(4).’” *Burda Media, Inc. v. Vietel, supra*, 417 F.3d at 298 (quoting, *State St. Bank*
26 *& Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 178 (2d Cir. 2004); *see also*,
27 *Aaronian, supra* at 639 (“Errors of law constitute an abuse of discretion.”)).

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IV.

**THE UNIGLOBE JUDGMENT BARRED ARC FROM OBTAINING
A DEFAULT JUDGMENT AGAINST MR. RENDA IN VIRGINIA
UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL**

“One trial of an issue is enough. ‘The principles of *res judicata* apply to questions of jurisdiction as well as to other issues, as well as to jurisdiction of the subject matter as of the parties.’” *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939)(quoting, *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938)).

“The doctrine of *res judicata* serves to protect adversaries from the expense and vexation attending multiple lawsuits, to conserve judicial resources, and to foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Americana Fabrics, Inc., v. L & L Textiles, Inc.*, 754 F.2d 1524, 1529 (9th Cir. 1985). “*Res judicata* encompasses two subsidiary doctrines, claim preclusion and issue preclusion.” *Id.* “Under claim preclusion, a final judgment on the merits of a claim bars subsequent litigation of that claim. *Id.* “The related doctrine of issue preclusion, or collateral estoppel, bars relitigation, even in an action on a different claim, of all “issues of fact or law that were actually litigated and necessarily decided” in the prior proceeding.” *Id.* “When the same claim or issue is litigated in two courts, the second court to reach judgment should give *res judicata* effect to the judgment of the first, regardless of the order in which the two actions were filed.” *Id.*⁷

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⁷ The default judgment at issue here is not subject to the “last in time” rule discussed in *Americana Fabric’s Inc.*, because the issue of personal jurisdiction was not actually litigated. *See, Americana Fabrics, Inc., supra*, at 1529 (collateral estoppel bars relitigation of issues of fact or law actually litigated and necessarily decided). Magistrate O’Grady merely accepted ARC’s allegations at face value when determining personal jurisdiction. DNOL, Ex. 6, pp. 160-161. However, the last in time rule should apply to the San Diego County Superior Court’s decision on June 26, 2008, in which the Superior Court vacated ARC’s default judgment in *Airlines Reporting Corporation v. McCord Consumer Direct, Inc.*, d/b/a A Better Airfare, *et al*, Circuit Court for Arlington County, Virginia, At Law No.:05-367, domesticated as San Diego County Superior Court Case No. GIC865200, for a lack of personal jurisdiction based on the *Uniglobe* judgment after a full briefing on the merits.

1 In *Semtek Int'l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001), the United
 2 States Supreme Court held that the preclusive effect of a dismissal by a federal court sitting in
 3 diversity is determined using the claim-preclusive rule used by the state in which the district
 4 court is located. Under Virginia law, there are five elements necessary for collateral estoppel
 5 to apply:

- 6 1. the issue litigated must have been essential to the prior judgment;
- 7 2. the prior action must have resulted in a valid and final judgment against the
- 8 party sought to be precluded in the present action;
- 9 3. the parties or privies in both the proceedings must be the same;
- 10 4. there must be mutuality between the parties;
- 11 5. the factual issue litigated actually must have been litigated in the prior action.

12 *Beckett v. Bundick (In re Bundick)*, 303 B.R. 90, 101-102 (E.D. Va. 2003)(citing, *TransDulles*
 13 *Center, Inc. v. Sharma*, 252 Va. 20, 22, 472 S.E.2d 274, 275 (1996)).

14 A defendant asserting collateral estoppel as a defense has the burden of proving the
 15 elements by a preponderance of the evidence. *Id.* (citing, *Reid v. Ayscue*, 246 Va. 454, 455,
 16 436 S.E.2d 439, 440 (1993)).

17 Here, Mr. RENDA has proven all of the elements of collateral estoppel. The issue of
 18 personal jurisdiction was essential to the *Uniglobe* judgment, actually litigated on the merits,
 19 and resolved in Mr. RENDA's favor. DNOL, Ex. 1, pp. 2-15; Ex. 2. The Virginia District
 20 Court issued a final, binding judgment on the merits based on its finding of no personal
 21 jurisdiction. *Id.* at Ex. 2. The relevant parties in *Uniglobe* and the case at bar are obviously
 22 the same, namely Mr. RENDA and ARC. There is mutuality because, under Virginia law,
 23 mutuality exists if the parties to the two actions are the same. *Beckett, supra*, 303 B.R. at 102-
 24 103 (citing, *Angstadt v. Atlantic Mutual Ins. Co.*, 249 Va. 444, 447, 457 S.E.2d 86, 88
 25 (1995)).

26 Accordingly, under the doctrine of collateral estoppel, the *Uniglobe* judgment
 27 establishes, as a matter of law, that the Virginia District Court lacked personal jurisdiction

28 / / /

1 over Mr. RENDA in this case, and therefore, the default judgment entered on September 4,
2 2007 is void.

3 V.

4 **IF THE COURT DISAGREES THAT COLLATERAL ESTOPPEL**
5 **APPLIES, MR. RENDA HAS SUBMITTED HIS DECLARATION**
6 **REGARDING HIS LACK OF CONTACTS WITH VIRGINIA**

7 If, for any reason, the Court finds that collateral estoppel does not apply, Mr. RENDA
8 has submitted his declaration so that the Court can evaluate whether the Virginia District Court
9 had personal jurisdiction to issue the default judgment. Mr. RENDA submits his declaration
10 out of an abundance of caution, and not with any intent to waive his collateral estoppel
11 argument, or his contention that ARC is barred from relitigating the issue of personal
12 jurisdiction in this proceeding because of the collateral estoppel effect of the *Uniglobe*
13 judgment.

14 VI.

15 **CONCLUSION**

16 For the foregoing reasons, Defendant MARIO. RENDA respectfully requests that the
17 Court vacate the default judgment in this action as void, pursuant to Federal Rules of Civil
18 Procedure, Rule 60(b)(4), because the United States District Court for the Eastern District of
19 Virginia lacked personal jurisdiction.

20 Dated: June 30, 2008

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